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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,863	01/19/2001	Thomas J. Powell	15966-641 CURA-141)	9092

7590 09/09/2003

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EXAMINER	
CHUNDURU, SURYAPRABHA	
ART UNIT	**PAPER NUMBER**
1637	16

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/766,863	POWELL ET AL.	
	Examiner	Art Unit	
	Suryaprabha Chunduru	1637	

--The MAILING DATE of this communication appears on the cover sheet with the correspondenc address --

THE REPLY FILED 23 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ they raise the issue of new matter (see Note below);
   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____.
3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *none*.

   Claim(s) objected to: *none*.

   Claim(s) rejected: *1-3, 6-7, 10-15, 17-20*.

   Claim(s) withdrawn from consideration: _____.
8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

JEFFREY FREDMAN
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: Applicants' arguments with respect to the rejection under 35 USC 103(a) have been fully considered and found not persuasive. Applicants argue that there is no suggestion to combine the teachings of Johnson and Kamb to produce the instant invention. Applicants further argue that Johnson teaches HepG2 cell type and does not teach or suggest the specific mamalian cell types required by the instant pending claims.. This agrument is fully considered and found not persuasive. In response to applicant's arguments that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir.1992). Further Johnson teaches different cell types in addition to HepG2 cell type, namely, hepatoma cell type (Fe33-rat hepatoma), BG-1ovarian carcinoma cells, breast carcinoma, endometrial carcinoma cells etc. (see page 18, lines 6-21, which suggests that Johnson teaches more than three mammalian cell types of which two cell types (hepatoma and hepatocyte cell types) and at least two cell types meet the limtations in the instant claims. Therefore it would have been prima facie obvious to a person of ordinary skill in the art at the time the invention was made, to combine the method of Johnson with the teachings of Kamb to achieve expected advantage of developing a sensitive and diagnostic method for screening a test compound because incorporating specific mammalian cell type(s) would enhance the specificity of test compound and improve the screening of a test compound over a wide range of targets which would result in better characterization of a test compound. Therefore the rejection made under 35 USC 103(a) is maintanined herein.